

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

PETER MILLER, CLIFFORD HOYT, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.

Plaintiffs,

v.

PATRICK TREADO and CHEMIMAGE CORP.

Defendants.

Case No. 05-10367 RWZ

**DEFENDANTS' MOTION TO IMPOUND
DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL**

Defendants Patrick Treado and ChemImage Corp. respectfully move this Court under LR 7.2 to impound Defendants' Memorandum of Law in Opposition To Plaintiffs' Motion To Compel. As grounds for this request, the defendants state the following:

1. Defendants' Memorandum of Law in Opposition To Plaintiffs' Motion To Compel is being filed under seal, by hand, with the Court because it describes and/or characterizes documents which have been designated "CONFIDENTIAL" in accordance with the Protective Order in the present case.

2. The plaintiffs and defendants had previously agreed to not disclose certain subject matter described and/or characterized in the attached document. See Exhibit X to Plaintiff's Motion To Amend Complaint, BATES No.: CRI004143, ¶2.

3. The Protective Order in this case, entered by the Court on May 1, 2006 [D.E. 38], states, at Sect. E(2):

In the event that any Protected Material is used in any Court proceeding in connection with this action, it shall not lose its status as "CONFIDENTIAL" through such use, and the parties shall take all reasonable steps to protect the confidentiality of such Protected Material during such use.

4. Due to the sensitive nature of the subject matter described and/or characterized in the attached document and the potential harm that would be caused to the defendants by its public dissemination, pursuant to Sect. E(2) of the Protective Order, the defendants hereby request that the Court order the impoundment of the attached document pursuant to LR 7.2, which impoundment shall last until further order of the Court.

5. Pursuant to LR 7.2(a), the defendants suggest the attached document be returned to defendants' custody after the period of impoundment.

WHEREFORE, defendants respectfully request that this Court:

- A. Issue an order impounding the Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Complaint; and
- B. Grant such further and other relief as this Court deems just, equitable and proper.

Respectfully submitted,

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick (BBO # 564324)
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: 617.289.9220
Fax: 617.289.9201
e-mail: ajfitzpatrick@duanemorris.com

Paul D. Weller (admitted *pro hac vice*)
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: 215.963.5530
eFax: 215.963.5001
e-mail: pweller@morganlewis.com

June 30, 2006

LOCAL RULE 7.1 CERTIFICATION

Pursuant to 7.1(A)(2), the undersigned certifies that counsel for the defendants have attempted to confer with counsel for plaintiffs regarding the issues raised in the foregoing motion. Defendants' counsel did not receive a response from plaintiffs' counsel before the deadline for filing.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on June 30, 2006.

In addition, complete copies of Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel are also being served, by overnight mail, on June 30, 2006 on:

Martin B. Pavane, Esq.
Teodor J. Holmberg, Esq.
COHEN, PONTANI, LIEBERMAN AND PAVANE
551 Fifth Avenue
New York, New York 10176
Tel. (212) 687-2770
Fax (212) 972-5487

and by hand to:

Brian L. Michaelis, Esq.
Erin E. McLaughlin, Esq.
BROWN RUDNICK BERLACK ISRAELS LLP
One Financial Center
Boston, MA 02111
Tel. (617) 856-8200
Fax (617) 856-8201

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick